

SERVICE DATE – JUNE 1, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34855

IOWA INTERSTATE RAILROAD, LTD.–ACQUISITION EXEMPTION–GREAT WESTERN
RAILWAY COMPANY OF IOWA, L.L.C.

Decided: May 25, 2006

By petition filed on March 27, 2006, Iowa Interstate Railroad, Ltd. (IAIS) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to acquire by purchase a rail yard owned by Great Western Company of Iowa, L.L.C. (Great Western). The rail yard (Great Western yard) consists of approximately 55 acres and 15 tracks, and extends from milepost 0 at 18th Street to milepost 1.6, at Council Bluffs, IA. IAIS also requests expedited consideration of the petition to permit closing of the transaction by June 1, 2006. We will grant the exemption subject to labor protective conditions, but provide for the exemption to be effective 30 days after the date of publication in the Federal Register.

BACKGROUND

IAIS is a Class II rail carrier that owns or operates approximately 552 miles of rail line in Iowa and Illinois. Its rail lines extend from Council Bluffs, IA, in the west, to Blue Island, IL (near Chicago), in the east. IAIS began operations in 1984, after acquiring its core rail lines following the bankruptcy of the Rock Island Railroad.

Great Western is a Class III rail carrier which began rail operations in 1991, after acquiring certain rail lines from the Council Bluffs and Ottumwa Railway, Inc. See Great Western Railway Company of Iowa, Inc.–Acquisition and Operation Exemption–Council Bluffs and Ottumwa Railway, Inc., Finance Docket No. 31873 (ICC served May 24, 1991).

Pursuant to an Agreement for Purchase and Sale of Rail Operations and Real and Personal Property, dated March 17, 2006, between IAIS and Great Western, IAIS will acquire the Great Western yard and the right to serve Great Western's sole customer, the Hansen Mueller Elevator (Hansen Mueller), a grain elevator. Under the terms of the proposed transaction, RKC Reality, LLC, an affiliate of Great Western, will retain approximately 5 acres of the rail yard, plus the land on which Hansen Mueller's elevator is located. IAIS will provide local service to the elevator after the transaction is complete. No other shippers are directly served by the subject rail yard, and thus, no significant service issues or concerns are associated with this transaction. IAIS states that Hansen Mueller will not lose any existing rail service or competitive rail options, and that in fact, it will gain transit options. IAIS asserts that its current customers could also benefit from the transaction.

IAIS currently operates a rail yard in Council Bluffs (IAIS yard), which adjoins the Great Western yard. The IAIS yard is in close proximity to Union Pacific Railroad Company's main hub, outside Omaha, NE. In addition, the BNSF Railway Company (BNSF) has a main line that enters the IAIS yard. IAIS interchanges unit trains of grain with BNSF. IAIS states that the proposed transaction will alleviate a critical bottleneck that has arisen with unit trains of grain and intermodal operations. According to IAIS, intermodal operations are significantly backlogged due to increased intermodal traffic, which IAIS attributes to higher fuel costs for motor carriers. This backlog has created serious congestion problems around the IAIS yard, prompting official complaints about traffic and dust control. IAIS indicates that it needs the additional ramp and storage space of the Great Western yard so that it can alleviate the backlog and better serve the needs of its customers.

IAIS states that it plans to lease a portion of the rail yard to several existing IAIS customers/shippers so that they can expand their business operations. One of those customers, Gerdau Steel (Gerdau), is currently vacating its steel scrap business located in Des Moines, IA, due to an urban revitalization project. IAIS asserts that it is important that IAIS take possession of the rail yard expeditiously so that Gerdau can relocate.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10902, the purchase, lease and operation of a rail line by a Class II carrier would require an application to, and authorization by, the Board. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 10902 for IAIS's acquisition of the Great Western yard is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. According to IAIS, acquisition of the Great Western yard will allow IAIS greater capacity for switching and will permit IAIS to expand its current intermodal facility, which in turn will enhance effective rail management and the long-term stability of IAIS's operations. Other aspects of the rail transportation policy are not adversely affected.

Regulation of this transaction is not necessary to protect shippers from the abuse of market power. IAIS's acquisition of the Great Western yard will have no adverse impact on competition. The sole shipper, Hansen Mueller, will not lose access to any rail service which it

currently receives. The proposed acquisition will ensure the continued efficiency of IAIS's service by providing IAIS with a location to expand its services to existing customers and a way to relieve bottleneck problems in its operations. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by section 10902(d), subject to the standards and procedures established in Wisconsin Central Ltd.–Acquisition Exem. Union Pac. RR, 2 S.T.B. 218 (1997), aff'd in relevant part sub nom. Association of American Railroads v. STB, 162 F.3d 101 (D.C. Cir 1998).¹ As required by 49 CFR 1121.4(h), on March 24, 2006, IAIS has certified to the Board that, on March 22, 2006, it has posted a notice of the transaction at the workplace of potentially affected employees. IAIS states that the Great Western employees are not represented, and thus, there is no need to provide notice to union representatives.

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in a significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because IAIS's acquisition of the Great Western yard is for the purpose of continued rail operations, further Board approval is required to abandon or discontinue service, and there are no plans to alter or dispose of properties subject to Board jurisdiction that are 50 years old or older.

In requesting expedited consideration, IAIS asks that the Board issue a decision that would be effective on or before May 28, 2006, to allow for closing of the transaction by June 1, 2006. IAIS states that the parties want to fully transfer the property to IAIS as soon as possible to allow IAIS to construct an intermodal ramp as part of the improved intermodal service IAIS intends to offer its customers and as part of a business plan that involves intermodal facilities at other locations on IAIS's line. While this decision is being issued on an expedited basis, IAIS has not justified its request for effectiveness by May 28, 2006. Thus, we will provide for the exemption to become effective 30 days after publication of notice in the Federal Register.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ In its petition, IAIS agrees to these labor protective conditions.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt IAIS's acquisition of the above-described rail yard from the prior approval requirements of 49 U.S.C. 10902, subject to the employee protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.
2. IAIS is directed to serve a copy of this decision on all shippers on the line within 5 days after the service date of this decision and to certify to the Board that it has done so.
3. Notice of the exemption will be published in the Federal Register on June 1, 2006.
4. This decision will be effective on July 1, 2006.
5. Petitions to stay must be filed by June 16, 2006. Petitions to reopen must be filed by June 26, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary